NOTICE—CITY OF NEW YORK VEHICLE USE TAX

(Pursuant to Article 29, Tax Law, § 1201(g))

A $15 Vehicle Use Tax, imposed by the City of New York, is required to be paid for every passenger or suburban vehicle owned or leased by a resident of New York City (other than one who has not lived there more than 30 days in the last year), a non-resident who maintains a place of residence there for at least 184 days, or a partnership, corporation or rental or leasing company which regularly keeps, stores, garages or maintains the vehicles there.

If your registration record indicates a New York City mailing address, on the preprinted renewal invitation there is printed a $15 amount as "CITY TAX". The fee shown next to "Pay This Amount" includes this additional amount, if applicable.

If you are not required to pay the tax but the amount was added to your registration fee, you must complete the enclosed Certification that payment of the tax is not required. The fee you submit with the Certification form and the enclosed preprinted renewal card will be $15 less than the total fee shown.

If you are not a resident of New York City but are using a New York City mailing address and the "City Tax" is included, you may continue to use the address and be exempt from the tax. Complete the enclosed certification and complete the Change of Address box on Part 3 by entering your MAILING ADDRESS and the name of the COUNTY in which you RESIDE.

The Vehicle Use Tax DOES NOT apply to registrations which are exempt from all fees, or to certain non-profit charitable organizations. The tax will be required only on original and renewal registration transactions.

For additional information, inquire at the nearest office of the New York City Finance Administration.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1541

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (Cert. Pet. App. 1)[1] is reported at 492 F. 2d 251.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 1974. A petition for a writ of certiorari was filed on April 15, 1974, and was granted on October 15, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

[1] "Cert. Pet. App." and "Pet. Br. App." refer respectively to the appendix to the petition for a writ of certiorari and to the appendix to petitioners' brief on the merits.

QUESTION PRESENTED

Whether an alien who circumvents the entire visa issuance and inspection process by making a false claim of citizenship is exempt from deportation under Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f).

STATUTE INVOLVED

Section 241(f) of the Immigration and Nationality Act, 66 Stat. 204, as amended, 8 U.S.C. 1251(f), provides as follows:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

STATEMENT

Petitioners, husband and wife, are citizens of British Honduras who entered the United States at the Chula Vista, California, Port of Entry by falsely stating that they were United States citizens.[2] Petitioner Robert Reid entered on November 29, 1968, and petitioner Nadia Reid on January 3, 1969 (Pet. Br. App. 3–4). Petitioners' children were born in the

[2] Documentary evidence of citizenship is not generally required of those entering the United States at ports of entry along the Mexican and Canadian borders. See *infra*, pp. 23–24.

United States in 1969 and 1971, and are thus American citizens (Pet. Br. App. 4a).

On November 22, 1971, petitioners were served with a notice of hearing and an order to show cause, charging that they were deportable under Section 241(a)(2) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(a)(2), as aliens who had entered the United States without inspection as aliens, claiming to be citizens of the United States (Pet. Br. App. 3). At the deportation hearing, petitioners moved for a termination of deportation proceedings under Section 241(f) of the Act, which excepts from deportation certain aliens who have "procured visas or other documentation, or entry into the United States by fraud or misrepresentation." It applies to aliens who bear specified close relationships to United States citizens or resident aliens, and who were "otherwise admissable at the time of entry." In support of their claim, petitioners submitted birth certificates of their two children born in the United States after their illegal entry.

The special inquiry officer and the Board of Immigration Appeals both upheld petitioners' deportability on the ground that an alien who circumvents the visa issuance and inspection process by a false claim of citizenship is not entitled to Section 241(f) relief (Cert. Pet. App. 4, 5). The Special Inquiry Officer granted petitioners the privilege of voluntary departure in lieu of deportation (Cert. Pet. App. 4d).[3]

[3] An alien who is deported may not re-enter this country without the special permission of the Attorney General, 8 U.S.C. 1182(a)(17). A deportable alien who departs voluntarily within the specified time avoids this disability.

On petition for review, the United States Court of Appeals for the Second Circuit affirmed the finding of deportability, one judge dissenting (Cert. Pet. App. 1). The court construed Section 241(f) as exempting from deportation only those aliens who gained entry into the United States as the result of fraud in obtaining immigrant visas or fraud upon being inspected as immigrants at the point of entry. It held that this section is inapplicable to those aliens who enter under a false claim of citizenship and thereby completely evade the immigration screening system established by other portions of the Act. The court below concluded (Cert. Pet. App. 1–1762):

> In our view there comes a point where, in construing § 241(f), the integrity of the immigration visa and inspection procedure outweighs the interest in giving relief to certain aliens who have entered this country by unlawful means and raised families here. We believe that that point has been reached here. When due consideration is given to the thousands of aliens who are required to follow the established screening process, it would be inequitable to expand § 241 (f) to benefit conduct that would wholly evade and stultify that process. The effect could be to encourage disregard for the immigration laws and to render them ineffective since no practical opportunity would be afforded in the I.N.S., in the case of an alien posing as a United States citizen, to conduct an investigation comparable to that mandated in the case of an immigrant seeking entry as such.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 241(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(f), relieves certain close relatives of United States citizens or resident aliens, if they were "otherwise admissible at the time of entry," from the "provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation * * *." The "provisions of this section" referred to in Section 241(f) are in Section 241(a)(1), 8 U.S.C. 1251(a)(1); they require deportation of those aliens who were excludable by law at the time of their entry. The particular ground of exclusion from which close relatives are relieved by Section 241(f) is contained in Section 212(a)(19) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(19), which excludes aliens who have entered or sought entry through fraud.

Section 241(f), as its language indicates, is quite limited in scope. It does not waive all grounds for deportation of persons who are close relatives of United States citizens, but only deportability on the ground that they were excludable at the time of entry for having procured documents or entry through fraud.[4]

[4] Deportation grounds are specified in 18 separate clauses of Section 241. Clause (1) encompasses 31 grounds for exclusion (and consequent deportability) set forth in Section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a), as

Furthermore, Section 241(f) applies only if the alien was "otherwise admissible at the time of entry." It thus represents a congressional conclusion that, under certain limited circumstances, the interest in family unity sufficiently outweighs the interest in the integrity of the immigration procedures to justify non-deportability of otherwise deportable aliens.[5]

The issue in this case is the identification of the precise circumstances in which this congressional judgment applies. This Court has considered Section 241(f) once before, in *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, and determined, despite the literal language of the section, that its special legislative history compels the conclusion that the waiver applies to aliens who procure immigration visas by fraudulently claiming entitlement to quota preference status. Neither the statutory language, the legislative history, nor the general statutory scheme, however, justifies concluding that the waiver also extends to aliens who evade the visa and inspection procedures entirely by gaining entry through a false claim of citizenship. Moreover, the extension of Section 241(f) to those who have entirely evaded the visa and inspection procedures would have extremely deleterious effects on the enforcement of the immigration laws. The congressional preference for family unity

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well as grounds for exclusion under earlier laws. Significantly, none of these deportation grounds, other than misrepresentation at the time of entry, is mentioned in Section 241(f).

[5] In other sections of the Act, Congress has recognized that family unity or other special considerations may justify discretionary waivers of immigration procedures on a case by case basis. See pp. 19–21, *infra*.

over the lesser adverse effects on the immigration system of false statements in visas or on alien inspection at entry does not indicate a similar preference when the careful procedures Congress has prescribed for screening aliens upon admission have been totally evaded through fraud.[6]

ARGUMENT

I

THE LANGUAGE OF SECTION 241(f) INDICATES IT APPLIES ONLY TO THOSE WHO COMMITTED FRAUD WHILE SEEKING ENTRY AS ALIENS

Section 241(f) applies to certain aliens "otherwise admissible at the time of entry" who "have procured visas or other documentation, or entry into the United States by fraud." Both quoted phrases indicate that Congress was assuming the applicability of established immigration procedures, and did not intend the waiver of Section 241(f) to apply to those who enter by falsely claiming citizenship.

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[6] Since petitioners here concealed their alienage entirely, they avoided any investigation by immigration officials. Two courts of appeals have considered a related situation, in which aliens obtain temporary admission as non-immigrants and fraudulently conceal their intention to remain. In that situation, the Immigration Service is put on notice of the applicant's alienage, and does conduct an investigation before admitting him. Nevertheless, the courts have correctly held that such aliens are not entitled to the benefits of Section 241(f). *Iqbal* v. *Immigration and Naturalization Service*, C.A. 9, No. 72-2539, decided June 27, 1973; *Arda* v. *Immigration and Naturalization Service*, C.A. 6, No. 72-1798, decided April 11, 1973, certiorari denied, 414 U.S. 873. *A fortiori*, those who have not even disclosed their alienage should not be so entitled.

The immigrant visa requirement, Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181), is essential to the effective operation of the system of controls established by the immigration laws. See 1 Gordon and Rosenfield, *Immigration Law and Procedure*, Sections 2.29, 2.30 (1974 Rev. ed.). The statute directs that "no immigrant shall be admitted into the United States unless at the time of application for admission he * * * has a valid unexpired immigrant visa". Section 211(a), Immigration and Nationality Act, 8 U.S.C. 1181(a). An immigrant is defined as "every alien except an alien who is within one of the * * * classes of non-immigrant aliens." Section 101(a)(15), Immigration and Nationality Act, 8 U.S.C. 1101(a)(15); 1 Gordon and Rosenfield, *Immigration Law and Procedure*, Section 2.5b (1974 rev. ed.).[7]

Any alien seeking entry into the United States as an immigrant is therefore required to obtain an immigrant visa from American authorities abroad. It is the responsibility of the consular office to check the alien's qualifications and to issue a visa only if he finds the alien qualified for entry as an immigrant. Section 221 (a) and (g) of the Act (8 U.S.C. 1201(a) and (g)). To aid the consul in this preliminary determination the alien must submit an application under oath, undergo registration, fingerprinting and prescribed mental and physical examinations, and present numerous documents bearing on eligibility, including

[7] Even aliens admitted as non-immigrants must obtain a visa and submit to the administrative screening and inspection process. See 8 U.S.C. 1184, 1222, and 1301.

a passport and birth record, police certificates, prison records, and military records. Sections 221 and 222 of the Act (8 U.S.C. 1201 and 1202).

The immigrant visa requirement is regarded by Congress as so fundamental that it has not permitted any waiver of it, except for returning lawful residents. Section 211(b), Immigration and Nationality Act, 8 U.S.C. 1181(b); see also *United States ex rel. Polymeris* v. *Trudell*, 284 U.S. 279.

The consul's issuance of a visa, however, does not assure the holder of admission to the United States, if, at arrival, the alien is found to be inadmissable. Section 221(h) of the Immigration and Nationality Act (8 U.S.C. 1201(h)). The alien is required to undergo further inspection at the port of entry. Section 235(a) of the Act (8 U.S.C. 1225(a)). This border examination includes a close inspection of the alien's travel documents and a reappraisal of his admissibility. See 1 Gordon and Rosenfield, *Immigration Law and Procedure*, Sections 3.14, 3.16 (1974 rev. ed.). The immigration officer is authorized to detain all arriving aliens who are not "clearly and beyond a doubt entitled to land." Section 235(b) (8 U.S.C. 1225(b)). See also *United States* v. *Sing Tuck*, 194 U.S. 161.

This two-step procedure explains the reference in Section 241(f) to fraud either in the procurement of visas or other documents, or on entry. The intent was to waive deportability for aliens with certain close

[8] Returning citizens undergo no similar inspection on entry. Although documentary evidence of citizenship is required of those entering at sea and air ports, oral affirmation of citizenship is generally sufficient for entry at ports of entry along the Canadian and Mexican borders. See *infra*, pp. 23–24.

family ties to lawful residents who had presented themselves as aliens to immigration authorities, but had committed fraud either in obtaining the visas or other documentation necessary for entry, or during the entry inspection procedures. If the statute referred only to misrepresentation in the applications for visas or other documentation, it would not cover situations in which the visa application was truthful, but the alien concealed on entry a relevant change in his situation—*e.g.*, an alien child of a citizen might conceal the fact that he had married (see 8 U.S.C. 1153(a)(1)).

That Congress intended the benefits of Section 241 (f) to be available only to persons who sought entry as aliens is confirmed by the limitation to aliens "otherwise admissible at the time of entry."[9] An alien who

[9] An alien who gains entry by fraudulently claiming citizenship instead of by acquiring the immigrant visa or other documentation required as a condition of admissibility by 8 U.S.C. 1182(a)(20) could never be "otherwise admissible", and for that reason alone would not be entitled to the benefits of Section 241(f). This Court, in *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, noted that Section 241(f) has consistently been interpreted as waiving not only the alien's fraud, but also "any deportation charge that results directly from the misrepresentation". *Id.* at 217. As the dissent points out (*id.* at 227, n. 2), the prior practice involved only the waiver of "fraud-related administrative procedural defects in the alien's entry." In order for the statute to have any effect, it must be read as forgiving not only the fraud in the application for a visa, but also the entry on the resultant defective visa. But the failure to obtain any visa at all is not this kind of "fraud-related administrative procedural defect"; it is instead a distinct requirement of admissibility which the alien has failed to satisfy. While it may be the cause for the alien's fraud, it is not a necessary result of it.

enters as an immigrant submits himself to the investigations required for the issuance of an immigration visa, and to the supplementary inspection at the port of entry. Records of these investigations are available when a claim of eligibility for waiver under Section 241(f) is subsequently made. They provide the Immigration Service with a substantial basis for determining later, when the waiver is sought, whether the alien was "otherwise admissible at the time of entry" and thus entitled to the waiver.

In contrast, there is no contemporaneous investigation of an alien who enters on a false claim of citizenship; there is unlikely even to be any record of such entry. It would therefore be extremely difficult, if not impossible, to determine whether such an alien was "otherwise admissible at the time of entry." In limiting waiver of deportation to aliens who met that requirement, Congress intended to restrict that privilege to those aliens who sought admission as aliens, and thus whose eligibility for admission had been checked at the time of entry and later could be verified.[10]

[10] In *Lee Fook Chuey* v. *Immigration and Naturalization Service*, 439 F. 2d 244, 248, the Ninth Circuit stated that the statute could be satisfied by an investigation at the time of the assertion of the right to a waiver under Section 241(f), to determine the alien's qualifications at that time. That is, of course, not what the statute requires, since it refers specifically to admissibility at time of entry. Moreover, several of the qualifications depend on the alien's activities and background in his country of departure. An investigation instituted after his fraud is discovered, perhaps many years after his entry, will thus necessarily be less effective than the one required by statute. Accordingly, post-entry determinations of admissibility are authorized only where the Attorney General, in his discretion, grants an application for an adjustment of status under 8 U.S.C. 1255.

Indeed, these considerations suggest that, even under petitioners' interpretation of the statute, the burden of proving that an alien was "otherwise admissible at the time of entry" should be on the alien, since many of the factors showing such eligibility will be within his knowledge.

II

THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT INTEND SECTION 241(f) TO BE AVAILABLE TO ALIENS WHO GAINED ADMISSION BY MISREPRESENTING THAT THEY WERE CITIZENS

In *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, this Court concluded that the legislative history of Section 241(f) required the conclusion that it applied to those who fraudulently claimed they were entitled to quota preference status. This legislative history, however, does not support the further extension of the section to those who fraudulently avoided the entire alien inspection process. On the contrary, the legislative history indicates that Congress intended only to ameliorate the provisions of the immigration laws to recognize the equities in favor of a specific small group of aliens whose misdoing was minor compared to the penalties imposed. Petitioners are not in this group.

Following the Second World War, Congress promulgated a number of immigration relief measures to aid refugees. Principal among these were the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, and the Refugee Relief Act of August 7, 1953, 67 Stat. 400. Although this legislation resulted in the admis-

sion to the United States of approximately 600,000 refugees, each Act included a restrictive provision which provided that any person who willfully made a misrepresentation for the purpose of gaining admission thereunder "shall thereafter not be admissible into the United States." Section 10, Displaced Persons Act, 62 Stat. 1013; Section 11(a), Refugee Relief Act, 67 Stat. 405. In 1952, in a comprehensive revision and recodification of the immigration and nationality laws, this provision was extended to other aliens. Section 212(a)(19), 8 U.S.C. 1182(a)(19). See S. Rep. No. 1137, 82d Cong., 2d Sess, pp. 10–11.

During the legislative discussions preceding the enactment of the 1952 Act, Congress evidenced concern over the harsh rigidity of these provisions. The House Committee added a proviso to excuse misrepresentation made by refugees in order to avoid persecution, if such representations were not otherwise material to admissibility. H. Rep. No. 1365, 82d Cong., 2d Sess., pp. 50, 134. Although the Conference Committee did not adopt this reservation, it was sympathetic to the objectives and urged immigration authorities to grant special consideration to aliens who had obtained travel documents by fraud or misrepresentation out of fear of forcible repatriation, provided that "such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence." H. Conf. Rep. No. 2096, 82d Cong., 2d Sess., p. 128. The Attorney General nevertheless concluded that the unqualified language of the statute precluded the relief the Conference Committee suggested. See H. Rep. No. 1199, 85th Cong., 1st Sess., p. 10.

In messages to Congress in 1956 to 1957, President Eisenhower recommended, *inter alia,* amendment of the Immigration Act to grant relief to aliens in the country who had obtained visas by misrepresentation in order to escape forcible repatriation behind the Iron Curtain. H. Doc. No. 329, 84th Cong., 2d Sess., p. 5; H. Doc. No. 85, 85th Cong., 1st Sess., p. 5. Acting upon this request, Congress authorized such relief in Section 7 of the Act of September 11, 1957, Pub. L. 85-316, 71 Stat. 640.[11]

Section 7 granted relief to "otherwise admissible" aliens who were excludable either because they procured "visas or other documentation, or entry into

[11] Section 7, as quoted in *Errico, supra,* 385 U.S. at 221, provided in relevant part: "The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in applying for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. * * *"

the United States by fraud or misrepresentation" or because they were not of the nationality specified in their visas. To obtain relief, such aliens had to meet one of two qualifications: (1) they had to have a specified close relationship to a citizen or a permanent resident alien, or (2) they had to have been admitted between December 22, 1945, and November 1, 1951, made specified misrepresentations on the visa application due to fear of persecution, and had no intent to avoid quota restrictions or investigation.[12]

With some modifications,[13] Section 7 of the 1957 Act was incorporated into the current statute by Sections 15 and 16 of the Act of September 26, 1961, Pub. L. 87-301, 75 Stat. 650, 655.

The waiver of deportability for close relatives was codified as Section 241(f). As this Court pointed out in *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, 223, the 1961 Act made no substantive change in the prior law.

The legislative history of Section 7 deals largely with the provisions relating to refugees, and is based on the assumption that those subject to the waiver had been admitted as aliens, not as citizens. It is unlikely that Congress intended, by possibly ambiguous lan-

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[12] Thus, all the provisions dealt with aliens seeking entry as aliens. Only the phrase "or entry" could possibly support the extension of the section to those such as petitioners who entered as citizens, and, in context, that interpretation is a strained one.

[13] The provision regarding refugees was omitted from the recodification of Section 7 in 1961, since it had "served its humanitarian purpose." H. Rep. No. 1086, 87th Cong., 1st Sess., p. 37.

guage, to extend the waiver also to those who totally avoided the immigration procedures. Any such far-reaching modification of the basic statutory scheme undoubtedly would have at least been mentioned during consideration of the bill.[11]

Instead, in the Senate debate Senator Eastland represented that the bill "does not touch the basic provisions of the McCarran-Walter Act." 103 Cong. Rec. 15487. In the House of Representatives the leading supporters of the legislation similarly stated that the bill made minor adjustments but "does not change the national origin quota system or rewrite our basic, fundamental immigration and naturalization laws" (Representative Chelf). 103 Cong. Rec. 16305. Moreover, Chairman Celler presented a section-by-section analysis of the bill, which stated with respect to Section 7 (103 Cong. Rec. 16301):

> This section also provides for leniency in the consideration of visa applications made by close relatives of United States citizens and aliens lawfully admitted for permanent residence who in the past may have procured *documentation*

[11] Petitioners rely on the comment in the House Report (H. Rep. No. 1199, 85th Cong., 1st Sess., p. 11, that: "[M]isrepresentation [by close relatives] in obtaining documentation or entry would not be a ground or deportation if the aliens were otherwise admissible at the time of entry under the immigration law. The latter category of aliens includes mosty Mexican nationals, *who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States*, establish a family in this country, and were subsequently found to reside in the United States illegally." [Emphasis supplied.] But the probable reference in the emphasized language is to laxity at the border in inspecting aliens who present themselves

for entry by misrepresentation. [Emphasis supplied.]

This Courts' analysis of the legislative history in *Errico* does not help petitioners. There, this Court noted that since Section 7 referred generally to "otherwise admissible" aliens, and then specifically excepted from that category those refugees who sought to avoid quota restrictions, "Congress must have felt that aliens who evaded quota restrictions by fraud would be 'otherwise admissible at the time of entry'." *Errico, supra,* 385 U.S. at 222. There is no such inconsistency in concluding that the waiver does not apply to aliens who have entirely avoided the immigration process.

III

THE STATUTORY SCHEME OF THE IMMIGRATION ACT INDICATES THAT CONGRESS DID NOT INTEND SECTION 241(f) TO BE AVAILABLE TO ALIENS WHO GAINED ADMISSION BY MISREPRESENTING THAT THEY WERE CITIZENS

This Court's decision in *Immigration and Naturalization Service* v. *Errico, supra,* was also based on the conclusion that "[t]he fundamental purposes [of the 1957 Act] was to unite families (385 U.S. at 224). In *Lee Fook Chuey* v. *Immigration and Naturalization Service,* 439 F. 2d 244 (C.A. 9), the court read that statement as indicating that Section 241(f) should be interpreted as a broad judgment that family unity is generally to be preferred to the interest in the inte-

as such, not to the practice of admitting those who claim United States citizenship on their oral affirmation. The latter practice is hardly a temporary and regrettable laxity: it is rather a long-standing, necessary procedure. See *infra*, pp. 23–24.

grity of the immigration procedures.[15] We submit that neither *Errico* nor the Immigration and Nationality Act justifies that conclusion.

This Court's essential reasoning in *Errico* dealt solely with the question whether Section 241(f) eliminated quota restrictions as a test of admissibility, and this limited concern is reiterated at several points in the Court's opinion. See 385 U.S. at 215, 220, 222, 223, 224.[16] Mr. Justice Stewart, in his dissent in *Errico*, in which Mr. Justice Harlan and Mr. Justice White joined, expressed concern that the Court's reasoning might justify a far broader reading of Section 241(f) than Congress intended, but he did not suggest that it would lead to so broad a reading as that of the Ninth Circuit, which would forgive the evasion

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[15] The integrity of the immigration procedures is important not only to assure that the congressional intent concerning the standards of admission are maintained, but also to assure fair treatment of those aliens seeking admission who comply with the established procedures and do not gain premature entry by fraud. For example, there was, as of January 1, 1974, a waiting list of 1,052 applicants for admission from British Honduras, petitioners' country, from which only 200 immigrants can be admitted annually.

[16] *Errico* does not, for example, indicate that the restrictions in Section 212(a) of the Act, 8 U.S.C. 1182(a), are also waived by Section 241(f). *Bufalino* v. *Immigration and Naturalization Service*, 473 F. 2d 728, 731–732 (C.A. 3), certiorari denied, 412 U.S. 928. Section 212(a) details 31 classes of aliens who shall be ineligible for admission, including, *inter alia*, those who are insane, mentally retarded or physically disabled, drug addicts, prostitutes or paupers, those who have contagious diseases or criminal records, and those likely to become public charges if admitted.

of all visa and alien inspection procedures (*Errico, supra,* 385 U.S. at 227–228).[17]

The 1957 Act, and particularly Section 7, was designed to modify the general Immigration Act provisions to a limited extent when the interests in family unity justified that modification. But although one of the purposes of the 1957 Act was to promote family unity, Section 7 did not enunciate any broad conclusion that family unity is to be the overriding concern in the interpretation of the Immigration Act. Indeed, the basic statutory scheme indicates otherwise.

The general scheme of the Act shows that, while Congress recognized the desirability of maintaining family unity, it did not subordinate all other important policies to that interest. In general, relationship to a lawful resident is only one factor to be considered in determining whether to grant discretionary relief from deportation. See *Hintopoulos* v. *Shaughnessy,* 353 U.S. 72, 77.[18]

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[17] Mr. Justice Stewart also suggested that the reasoning of the majority indicated that Section 241(f) does not forgive any lies about nationality. *Id.*, 229–230, n. 6. Under that analysis, petitioners' lies concerning their nationality would not be waived.

[18] For example, Section 244 of the Act (8 U.S.C. 1254) authorizes suspension (and ultimately waiver) of deportation for aliens with extended residence in this country if deportation would result in extreme or unusual hardship to the alien or close relatives in the United States. Although most grounds for deportation can be waived under this section, its benefits are available only to those who meet prescribed standards of residence, good moral character and hardship (8 U.S.C. 1254 (a)): Relief is not available, moreover, for specific categories of aliens such as crewmen, exchange visitors and natives of nearby coun-

Section 241(f) is an exception to this general scheme, since the factor of relationship is enough, by itself, to entitle an "otherwise admissible" alien to an automatic waiver of deportability. Moreover, this unusually generous benefit is conferred only on those who obtained admission by fraud, who are thus favored over those who have the same family relationship to citizens but have not committed fraud.[19] The emphasis in the rest of the Act on consideration of all the equities, including not only family relationships[20] but also other factors relating to admissibility, indicates that Congress, by limiting Section 241(f) relief to "otherwise admissible" aliens, intended to restrict it narrowly—at least, to those aliens who admit their alienage on entry.

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tries (see 8 U.S.C. 1254(f)). In any case, the statute provides that suspension of deportation can be granted only in the discretion of the Attorney General and that any such grants must be submitted to Congress for its approval (8 U.S.C. 1254(c)). Similar conditions substantially limit other waivers of deportability authorized by Congress for aliens with close relatives or long residence in the United States. *E.g.*, 8 U.S.C. 1259 (see *Mercica* v. *Esperdy*, 376 U.S. 560); 8 U.S.C. 1182(e); 8 U.S.C. 1182(h).

[19] Petitioners' parenthood of minor U.S. citizens would not of itself enable them either to obtain preference in admission or, once within the country, to obtain lawful resident status. 8 U.S.C. 1151(b). See *Hintopoulos* v. *Shaughnessy*, *supra*; *Aalund* v. *Marshall*, 461 F. 2d 710, 714 (C.A. 5); *Faustino* v. *Immigration and Naturalization Service*, 432 F. 2d 429 (C.A. 2), certiorari denied, 401 U.S. 921; *Perdido* v. *Immigration and Naturalization Service*, 420 F. 2d 1179 (C.A. 5).

[20] Although wives and children of citizens are entitled to preferences in admission as immigrants, not all marriages are recognized for that purpose (see 8 U.S.C. 1101(a)(35)), and the term "child" is narrowly defined (see 8 U.S.C. 1101(b)).

Petitioners' claims are particularly inconsistent with Congress' actions in relation to adjustment of status under Section 245 of the Act (8 U.S.C. 1255). This procedure is often invoked to avert the deportation of aliens who are in the United States in temporary or unlawful status, who have married and established families in this country, and who wish to attain permanent residence without leaving the United States. The statute specifies that adjustment is available only to an "alien, other than an alien crewman, who was inspected and admitted or paroled into the United States". Thus, this statutory dispensation is limited to aliens who have already gone through some regular alien admission process. Moreover, an alien applying for adjustment of status under Section 245 is legally in a position analogous to that of an alien seeking to enter the United States for permanent residence and must be eligible to receive an immigration visa and be admissible for permanent residence under all provisions of the immigration laws. See *Campos* v. *Immigration and Naturalization Service,* 402 F. 2d 758, 760 (C.A. 9); *Talanoa* v. *Immigration and Naturalization Service,* 397 F. 2d 196, 199–200 (C.A. 9).

It is improbable that Congress intended that an alien who fraudulently claimed to be a United States citizen, and thus was able to enter the United States without any visa or inspection, is entitled to greater benefits than an alien who becomes eligible for adjustment of status under Section 245 only if he has submitted himself to the administrative process for entry as an alien.

IV

APPLICATION OF THE WAIVER PROVISIONS OF SECTION 241 (f) TO ALIENS WHO GAINED ADMISSION BY CLAIMING CITIZENSHIP WOULD SUBSTANTIALLY ERODE THE SYSTEM OF VISA ISSUANCE AND NUMERICAL RESTRICTIONS CAREFULLY DEVELOPED BY CONGRESS IN ORDER TO CONTROL ENTRIES INTO THE UNITED STATES

As we have noted previously, all aliens who admit their alienage at the border must provide documentary evidence of their right to enter this country,[21] and submit to a detailed inspection by the Immigration and Naturalization Service to assure that they are admissible. Because of the large numbers of persons making such border entries, as a practical matter it is impossible to conduct more than a cursory investigation of claims of United States citizenship made at points of entry across our land borders. 1 Gordon and Rosenfield, *Immigration Law and Procedure,* Section 3.2, 3.16b (1974 rev. ed.).

It is thus comparatively simple for aliens to gain entrance on false claims of citizenship. *Goon Mee Heung* v. *Immigration and Naturalization Service,* 380 F. 2d 236, 237 (C.A. 1), certiorari denied, 389 U.S. 975. If they can then attain the right to remain simply by acquiring a citizen spouse or child, the statutory immigration controls will be substantially eroded.

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[21] See note 7, *supra;* 8 U.S.C. 1181(a). An immigrant may obtain such a document only after an investigation by American officials in his country of origin to assure that he meets the statutory requirements for admissibility. 8 U.S.C. 1201; 22 C.F.R. Part 42.

Petitioners' reading of Section 241(f) would result in serious evasion of the Immigration and Nationality Act and place a premium on fraud and wrongdoing. During fiscal year 1973, more than 235 million persons passed through ports of entry along the Canadian and Mexican borders. Of that number, 99,910,295 entered the United States under a claim of United States citizenship; the vast majority of such claims were based upon oral affirmation. 1973 Annual Report, Immigration and Naturaliztion Service, p. 27. 1 Gordon and Rosenfield, *Immigration Law and Procedure,* pp. 3–75, 3–97 (1974 rev. ed.). The problem created by fraudulent claims of United States citizenship is a matter of constant concern to the Immigration Service, since many aliens take advantage, as did petitioners, of the necessary informality to obtain entry into the United States through falsely representing themselves as citizents of the United States. By limiting the ability of the Immigration Service to deport such aliens once they have gained admission, and thus increasing the incentive to engage in such fraud, petitioners' interpretation of Section 241(f) would produce an especially grave enforcement problem on the Mexican border, where there are hundreds of thousands of illegal entries each year.[22]

Many thousands of these illegal entrants come into this country surreptitiously, and (as petitioners recognize) Section 241(f) does not benefit this category of

[22] In recent years there has been a steep rise in illegal entries from Mexico. During fiscal year 1973, the Service located 576,823 illegal entrants, an increase of 34 percent over the preceding year. 1973 Annual Report, *supra*, at pp. 8–9.

alien. See *Monarrez-Monarrez* v. *Immigration and Naturalization Service*, 472 F. 2d 119 (C.A. 9). As a practical matter, however, it is difficult, if not impossible, to refute a surreptious entrant's claim that he had entered through a port of entry on a false claim of citizenship. Unless there is some reason for suspicion by immigration officers, no record is made of persons entering this country at ports of entry along our land borders under a claim of citizenship.[23] Indeed, given the fact that nearly 100 million persons enter on such a claim annually, useful record keeping would be impossible without very seriously interfering with legitimate border traffic.

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be affirmed.

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[23] Due to the more limited number of persons who arrive by sea or air, documentary evidence is required for such entry. See 1 Gordon and Rosenfield, *supra*, section 3.2. During fiscal 1973, approximately 10 million persons entered this country through sea or air ports under claims of citizenship. 1973 Annual Report, *supra*, at p. 27.

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